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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,402	07/09/2003	William Henry Lewis	012407.000081	9221

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EXAMINER	
LOBO, IAN J	

ART UNIT	PAPER NUMBER
3662	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,402	LEWIS ET AL.	
	Examiner	Art Unit	
	Ian J. Lobo	3662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 4-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menezes in view of Hill et al ('178) or Szilagyi et al ('278).

The patent to Menezes has been discussed in the previous office action. Specifically, Menezes discloses a system for controlling (**attracting or repelling**) aquatic populations in a defined area. The system includes a submersible device (18) and a programmable control unit (10, 12) operably connected to the submersible unit. The programmable control unit includes a processor (CPU), a memory device and input device (EPROM) for storing a plurality of digital sound recordings (col. 13, line 6 – col. 14, line 66) and selecting one or more of the digital sound recordings to be played via the submersible device.

With respect to independent claims 4 and 13, although Menezes discloses that sounds "associated with predators" may be utilized for controlling (**attracting or repelling**) the aquatic animals, Menezes does not show that the sound "associated with aquatic prey" or "aquatic animals feeding" may be utilized.

The patent to Hill et al discloses a system for attracting aquatic animals to a certain location. The system utilizes sound of aquatic animals feeding or the sound of

aquatic prey (bait fish) being eaten (col. 2, lines 29-34). Hill et al teach that such sounds are highly effective as an attractant. The patent to Szilagyi et al also discloses a system for attracting aquatic animals and specifically teaches using the sound of feeding predatory fish to attract predatory fish to an area.

Thus, in view of either Hill et al or Szilagyi et al, it would be obvious to one of ordinary skill in the art to use the aquatic animal attracting system of Menezes by utilizing the acoustic sounds associated with prey or prey being attacked and eaten since Hill et al and Szilagyi et al each teaches that such sounds are highly effective for attracting aquatic animals. Claims 4 and 13 are so rejected.

Claims 5-7 and 14-17 specify controlling the volume of playback. Claim 6 of Menezes claims control and variance of the sonic signal intensity. It is obvious to one of ordinary skill in the art that the control of the intensity of a signal is tantamount to controlling the volume, such that the instant claims are obvious over the system of Menezes (see col. 4, lines 31-44).

With respect to claims 8 and 9, it is apparent that delayed and intermittent signals are variables of obvious design choice, over Menezes, to one of ordinary skill in the art.

With respect to claims 10, 11 and 22, col. 15, lines 35-36 of Menezes, detail that "predator sounds" are used. The claimed "fish in distress" and "prey being attacked and eaten" sounds, as claimed in claims 10 and 11, and "animals feeding on crawfish" of claim 22, are provided by the "predator sounds" of Menezes.

With respect to claim 12, it is a design choice to duplicate known parts (in the instant case, the transducer element) and obvious to one of ordinary skill in the art .

With respect to claims 18 and 20, see Menezes, Fig. 1.

With respect to claim 21, see Fig. 1, analyzer and computer 16.

With respect to claim 19, see Menezes, Fig. 4.

With respect to claims 23 and 24, see Menezes, col. 4, line 5.

With respect to claim 25, Fig. 1 shows control unit that reads upon a motor.

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holt ('891) in view of Hill et al or Szilagyi et al.

Holt discloses a submersible device (see Fig. 9) for attracting and stimulating aquatic animals. The device includes a watertight housing (100), a first transducer element (135), and a diaphragm (140) connected to the diaphragm. The device is operable as a speaker in response to control signals from a programmable device and emits prerecorded acoustical signals in response to the prerecorded signals. Note that a programmable device inherently provides signals in a specified sequence and at a specified volume.

The difference between claim 1 and the structure disclosed in Holt is the claim specifies that the acoustical signals comprise "sounds of prey being attacked and eaten underwater".

The patent to Hill et al discloses a system for attracting aquatic animals to a certain location. The system utilizes sound of aquatic animals feeding or the sound of aquatic prey (bait fish) being eaten (col. 2, lines 29-34). Hill et al teach that such sounds are highly effective as an attractant. The patent to Szilagyi et al also discloses a

system for attracting aquatic animals and specifically teaches using the sound of feeding predatory fish to attract predatory fish to an area.

Thus, in view of Hill et al or Szilagyi et al, it would be obvious to one of ordinary skill in the art to modify Holt to include and transmit prerecorded acoustical signals of prey being attacked and eaten so as to improve the device since Hill et al and Szilagyi et al each teach that such specific sounds are highly effective as attractants. Claim 1 is so rejected.

Claim 3 is disclosed in Holt since a fishing system inherently includes a flotation device.

With respect to claim 2, it is a design choice to duplicate known parts (in the instant case, the transducer and diaphragm of Holt) and obvious to one of ordinary skill in the art.

Response to Arguments

4. Applicant's arguments filed August 25, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teachings of Hill et al and Szilagyi et al suggest that the sounds of prey or prey being attacked and eaten are types of advantageous attracting or repelling sounds in attracting or repelling aquatic animals. Such a teaching would be enough motivation to one of ordinary skill in the art to apply such sounds to the Menezes system since Menezes discloses using the generic aquatic animal repelling or attracting sounds.

In response to applicants arguments with respect to the rejection of claims 1-3, it is the Holt (5,177,891) patent that is applied, and not the '858 patent.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (571) 272-6974. The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza can be reached on (571) 272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ian J. Lobo
Primary Examiner
Art Unit 3662

ijl